

General Information Letter: Activities described appear to be protected activities under Public Law 86-272.

August 6, 2007

Dear:

This is in response to your letter dated July 24, 2007 in which you request a letter ruling. The nature of your request and the information provided requires that we respond with a General Information Letter (GIL). A GIL is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code § 1200.120(b) and (c), which may be accessed from the Department's web site at www.Iltax.com.

Your letter states as follows:

COMPANY1 (Company), a Delaware corporation, provides a process of collecting cash payments for all types of subscription based services providing a consistent consumer experience. The Company provides payment processing capabilities with a redundant and scaleable architecture delivering extremely high availability. Through COMPANY1's processing facilities in CITY1, Oregon and CITY2, Texas, service providers and retailers offer consumers an alternative approach when paying with cash on a nationwide basis.

The core products include COMPANY2, COMPANY3 and COMPANY4. COMPANY1 uses COMPANY5 which is its proprietary merchant interface to process transactions for all the company's products and services. The following paragraphs describe the core products in detail.

It should be noted the company processes transactions at facilities located in Oregon. COMPANY1 is not an agent or legal representative of the retailer for any purpose whatsoever nor are retailers an agent or legal representative of COMPANY1. Nothing will authorize either party to create any obligation or responsibility whatsoever, express or implied, on behalf of the other or to bind the other in any manner, or to make any representation, commitment or warranty on behalf of the other. COMPANY1 does not maintain real or tangible personal property and does not employ personnel or agents within the state. The company provides retailers with access to internet training and no training is performed or provided by the company or its agents within the State. COMPANY1 has a federal money services business registration with COMPANY6 (COMPANY6) which is issued by the US Department of Treasury.

COMPANY2

COMPANY2 service allows retailers to take cash payments for customers' recurring bills from a variety of participating service providers. Customers can sign up in a retailer's store by providing the account number for the bill they wish to pay. Customers can pay a variety of their bills (e.g. utility, cable, cell phone) through this service. Retailer enters the customer's personal information and service provider account number via computer on COMPANY5. Once the initial setup is complete, COMPANY1 will mail the customer a reusable card with their service provider account number in the magnetic strip on the back, with no cash value. For all subsequent payments to the account, the customer will simply present cash payment to

the retailer who will swipe the card and input the amount of payment.

The customer pays a fixed fee to the retailer to obtain the reusable COMPANY2 card. The customer can then use cash to make future payments to this vendor electronically by presenting cash and the card to any participating retailer. The retailer charges a transaction fee based on the service provider that is paid. In addition, COMPANY1 may charge a processing fee for every approved transaction. The retailer makes daily transfers of all payment amounts, processing fees and consumer fees ("Settlement Funds") into retailer's bank account. The retailer authorizes COMPANY1 to debit all Settlement Funds and other amounts owed from the retailer's account. The Retailer is paid a transaction fee for facilitating the transaction.

COMPANY3

COMPANY3 service allows retailers to sell prepaid cell phone service in fixed dollar increments to customers through participating cell phone service providers. Retailer accepts a cell phone payment from customer and logs onto COMPANY5 to select the customer's cell phone service provider and the refill amounts from drop down menus. A receipt is generated containing the PIN that the customer will need to activate the service. The retailer retains a commission based on the service provider selected by the customer. COMPANY1 charges a prepaid refill monthly service fee per location that is collected the first week of every month for the transaction processing activities that occur outside the State.

COMPANY4

COMPANY4 offer an authentic COMPANY7 or COMPANY8 card product that allows consumers to store and access funds they deposit. Customer selects a card from a display at retailer's store and presents cash to be stored on the card to the retailer. Retailer then logs onto COMPANY5 to input the customer's personal information, plus the amount of cash collected to be stored on the card. The customer can activate and use the card immediately by calling a number on the card. A personalized, permanent card is mailed to the customer later that may be reloaded as often as the customer likes. The retailer accepts the cash to be stored on the card plus applicable transaction fee ("consumer fees") levied on the card holder. Every time an account number is used, COMPANY1 charges the retailer a processing fee for every approved transaction. The retailer makes daily transfers of all payment amounts, processing fees and consumer fees ("Settlement Funds") into a bank account. The retailer authorizes COMPANY1 to debit all Settlement Funds and other amounts owed from the retailer's account. The Retailer is paid a transaction fee for facilitating the transaction.

Question Presented

For Illinois corporate income tax purposes, does COMPANY1 have a filing requirement and are they subject to tax?

RULING

The determination whether a taxpayer has nexus with Illinois is extremely fact-specific. Therefore, the Department does not issue rulings regarding whether a taxpayer has nexus with the State. For

information regarding nexus, see Department of Revenue Regulations Section 100.9720 (accessible from the Department's web site). In addition, the following general information may be provided.

The United States Constitution limits a state's power to subject to income tax foreign corporations and other nonresidents. The Due Process Clause requires that there exist some minimum connection between a state and the person, property, or transaction the state seeks to tax. (*Quill Corp. v. N. Dakota*, 504 U.S. 298 (1992)) The Commerce Clause requires that a state's tax be applied only to activities with a substantial nexus to the taxing state. (*Id.*) In the case of foreign corporations, Illinois may assert nexus to tax unless the corporation falls under the protection conferred by Public Law 86-272. (15 U.S.C. § 381) Public Law 86-272 precludes any state from subjecting a nondomiciliary corporation to a net income tax where such corporation's only activities within the state for the taxable year consist of solicitation activities for sales of tangible personal property.

As a general rule, the Department interprets the concept of nexus as broadly as possible. Where any part of a corporation's income is allocable to Illinois under Article 3 of the Illinois Income Tax Act ("IITA" ; 35 ILCS 5/101 *et seq.*), unless protected under P.L. 86-272, the Department will assert jurisdiction to tax.

Section 502(a) of the IITA sets forth the requirements for filing Illinois income tax returns. That section states in pertinent part as follows:

(a) In general. A return with respect to the taxes imposed by this Act shall be made by every person for any taxable year:

(1) For which such person is liable for a tax imposed by this Act, or

(2) In the case of a resident or in the case of a corporation which is qualified to do business in this State, for which such person is required to make a federal income tax return, regardless of whether such person is liable for a tax imposed by this Act.

Under this section, a corporation must file an Illinois income tax return if it incurs a liability for tax imposed under Section 201 of the IITA, and in the case of a corporation qualified to do business in Illinois, if it is required to file a federal return (regardless of whether it is liable for Illinois tax). A corporation is liable for Illinois income tax under Section 201 if it derives "Illinois net income" as defined under IITA Section 202. IITA Section 202 defines Illinois net income as that portion of the taxpayer's "base income" as defined in Section 203, which is allocated or apportioned to Illinois under the provisions of Article 3 of the IITA, less certain deductions. The above provisions may be accessed from the Department's web site.

IITA Section 304(a) provides for taxable years ending on or after December 31, 2000 that the apportionment factor for a corporation deriving business income from Illinois and one or more other states (other than an insurance company, financial organization, or transportation company) shall be equal to its sales factor. Section 304(a)(3)(A) defines the sales factor as a fraction, the numerator of which is the total sales of the person in Illinois during the taxable year, and the denominator of which is the total sales of the person everywhere. Department of Revenue Regulations Section 100.3370(c)(3) provides that gross receipts from sales other than sales of tangible personal property are allocable to Illinois if the income-producing activity that gave rise to the receipts is performed wholly in Illinois, or the income-producing activity is performed in Illinois based on costs of

performance. The above provisions may be accessed from the Department's web site.

In the case of a financial organization, a special apportionment formula is prescribed under Section 304(c). Under that section, the business income of a financial organization is apportioned to Illinois based on the ratio of its business income from Illinois sources over total business income from all sources. The section goes on to describe the items of income that are considered to be Illinois source. See also Department of Revenue Regulations Section 100.3400. In addition, Department of Revenue Regulations Section 100.9710 defines the entities that are treated as "financial organizations" under the IITA. The above provisions may be accessed from the Department's web site.

As stated above, this is a GIL. A GIL does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department.

Sincerely,

Brian L. Stocker
Associate Counsel (Income Tax)